



1 June 2023

FIA EPTA response to the FCA and PRA Discussion Paper on the Review of the Senior Managers and Certification Regime (SM&CR) [DP1/23](#)

Introduction	<p>The FIA European Principal Traders Association (FIA EPTA) represents Europe’s leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk-transfer for markets and end-investors across Europe. FIA EPTA works constructively with policy-makers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe. FIA EPTA’s members are based in the Czech Republic, Germany, Ireland, The Netherlands, and the UK (~70% of our members have been licensed by the FCA).</p> <p>FIA EPTA members welcome the opportunity to respond to FCA and PRA on the Discussion Paper on the Review of the Senior Managers and Certification Regime (SM&CR) DP1/23. Generally, FIA EPTA members believe the SM&CR regime is working as intended and has brought renewed focus on individual accountability in financial services. However, in our response, we highlight some of the operational and administrative burdens that SM&CR brings to firms. We believe that the burden can be alleviated without having a material impact on the purpose behind the rules and in a way which supports the Government’s wider competitiveness agenda.</p> <p>In particular, FIA EPTA members suggest that the FCA should significantly limit the number of Senior Manager Functions that require FCA prior approval. We believe Senior Manager Functions requiring prior approval should be limited to “C-Suite roles” such as Chief Executive Officer, Executive Directors and Compliance Officer and Money Laundering Reporting Officer roles, as further detailed in Q4 below.</p>
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	<p>In addition, FIA EPTA members believe the FCA should limit the number of Certification Functions to those roles which pose the most immediate risk to consumers. This would significantly reduce the number of individuals that would be required to be listed on the FCA public directory as in many cases those individuals have no dealings with retail clients or consumers. This is described in more detail in Q9. These steps would reduce some of the administrative burden currently placed on SM&CR firms without losing the regime’s focus on protecting consumers and maintaining market integrity.</p> <p>We would also highlight the somewhat disproportionate nature of bringing in all Significant SYSC Firms into Enhanced Firm status when, and particularly for FIA EPTA member firms, the consumer and CASS risks are less obvious when compared to the Enhanced SM&CR criteria generally. We elaborate more fully on this point in our response to Q11.</p> <p>FIA EPTA members appreciate FCA’s and PRA’s consideration of our comments herein and welcome the opportunity to discuss further and provide additional input as required.</p>
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3. Effectiveness, scope and proportionality

Question	FIA EPTA Response
Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?	<p>FIA EPTA members believe that SM&CR has brought more clarity to an individual’s responsibility and has helped to promote a greater culture of accountability in the financial services industry.</p> <p>The requirements under the regime for Senior Managers to have Statements of Responsibilities that must be kept up to date to the extent that a Senior Managers role and responsibilities change helps to encourage Senior Managers to take accountability for all of their actions. Furthermore, the requirement that all Senior Managers comply with additional conduct rules as compared to conduct and certified function staff, helps enforce the FCA’s expectations of responsibility bestowed on those key individuals.</p>

	<p>Management Responsibilities Maps, which Enhanced Scope firms are required to prepare, set out clear reporting lines and governance structures. This helps ensure that individuals (including those who are <u>not</u> Senior Managers or Certified Persons) within the firm know who is responsible for a given area of the business and provide clear reporting lines to a Senior Manager.</p>
<p>Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?</p>	<p>As we set out in our response to Question 1, we believe the SM&CR has made it easier to hold individuals to account, FIA EPTA members believe this is rather difficult for firms to quantify whether the regime has concretely improved safety and conduct within firms. Any benefits should be set against the administration and operational burden placed on firms in complying with the various aspects of the regime. In particular, we note the burden of the certification regime and the lack of clarity that can pertain to the Senior Manager’s regime.</p>
<p>Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?</p>	<p>FIA EPTA members believe that the fitness & propriety requirements are designed to ensure that when firms appoint Senior Managers they take into consideration a number of factors, including professional qualifications, criminal background checks and previous employment. Where fitness and propriety are called into question, firms consider the nature and severity of the impropriety and through consultation with Human Resources, Legal, Executive Directors and other relevant Senior Managers, are able to consider whether an individual is best suited for the role.</p> <p>Firms note that prior to the implementation of SM&CR, firms had already been considering a combination of these factors when appointing individuals to any positions within the firm and/or the firm’s group. The fitness and propriety requirements under SM&CR do not radically change a firm’s behaviour but it emphasizes the importance of the requirements.</p> <p>FIA EPTA members note that before Senior Managers are appointed, Senior Managers are subject to FCA approval before they are able to commence their role. Delays in the approval process have been hindering the industry as incoming Senior managers have to wait until FCA approval before they are able to take up their roles.</p>
<p>Q4: Please provide any suggestions that can help ensure that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles.</p>	<p>Senior Manager appointments are subject to FCA approval. Recently the FCA has experienced a large backlog of Senior Manager approvals and this can cause issues within the firms as it. This means that there may be delays for the firm in having the Senior Manager start working and adding value to the business.</p>

	<p>FIA EPTA members suggest a potential modification, for the FCA to limit the number of Senior Manager Functions that require express FCA prior approval. For example, FCA approval could be required for a limited number of executive functions only such as Chief Executive Officer, Executive Director, Compliance Officer and Money Laundering Reporting Officer. These functions would be subject to FCA approval in the usual way. However, for all other Senior Management functions, the firms would only be required to notify the FCA of such an appointment. For example, the Chair of the Remuneration Committee (SMF 12) AND Chair of the Nomination Committee (SMF 13) would not be subject to prior FCA approval as these positions are for discharging supervisory/oversight functions as opposed to executive functions at a firm’s Board level and therefore carry a lesser degree of risk.</p>
<p>Q5: To what extent do you agree or disagree that the SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?</p>	<p>FIA EPTA members note that prior to SM&CR, firms had policies and procedures on how to hold individuals who work in financial services to account. FIA EPTA members agree with the importance placed on individual accountability and SM&CR supplements what many firms already had in place through various Compliance and Human Resources policies and procedures. This alignment and emphasis on proper conduct has helped provide a unified message to staff in relation to the firm’s existing policies and procedures and therefore helped the firms provide staff with clarity concerning what conduct would bring about disciplinary action.</p> <p>For example, most firms already had strict compliance policies and procedures, respectful workplace policies and encouraged individuals to act with integrity, act with due skill, care and diligence and adhere to proper standards of market conduct. By formally holding staff to account via clear conduct rules, these expectations have been reinforced under SM&CR.</p>
<p>Q6: To what extent do the specific accountabilities of individual directors established by the Senior Managers Regime work in ways that complement the collective responsibility of the board of directors or decision making committees? Are there ways this could be improved?</p>	<p>The focus of SM&CR is on individual accountability from the top down and bottom up. While this accountability is essential for delivering better standards across the industry, there is a lack of guidance from the FCA when it comes to the interaction between individual accountability and collective responsibility, specifically within the Board of Directors/Governing body and/or various committees that a firm may have in place for its internal corporate governance.</p> <p>One example of this is the allocation of Prescribed responsibilities, which are allocated to Senior Managers, but appear to suggest that the FCA would take enforcement action against the specific individual that held such function rather than take into consideration the Board or Committee that may have collectively provided input into any such decision. FIA EPTA members believe it would be helpful if the FCA could provide more guidance on the relationship between individual and collective accountability and the FCA’s expectations in this regard.</p>

<p>Q7: To what extent do you agree or disagree that the prospect of enforcement promotes individual accountability?</p>	<p>Senior Managers are aware that they may be subject to enforcement actions where they fail to act reasonably. However, although enforcement actions typically encourage individuals to act reasonably, FIA EPTA members think Senior Managers are typically trying to ensure that they are supporting the firm’s business effectively and ensuring the firm meets its obligations to its regulators, stakeholders such as its clients, employees and shareholders in the most effective way possible.</p> <p>Enforcement action could deter some Senior Managers from taking on Senior Manager functions, however, FIA EPTA members think this is generally unlikely to be the main factor for a Senior Manager choosing not to accept a position.</p>
<p>Q8: How could our approach to enforcement be enhanced to better support the aims of the SM&CR?</p>	<p>FIA EPTA members don’t believe it is necessary that the FCA’s approach to enforcement needs to be enhanced. The low number of enforcement cases under SM&CR suggests that firms are taking the regime seriously.</p> <p>In addition, FIA EPTA members believe that further guidance from the FCA on what may constitute non-financial misconduct could be helpful and would be welcomed.</p>
<p>Q9: To what extent do you agree or disagree that the scope of the SM&CR is appropriate?</p>	<p>As set out in our response to question Q4, FIA EPTA members believe the list of Senior Manager appointments that are subject to FCA approval should be reduced. This would improve application processing time and would ease some of the administrative burden that firms currently face by having to complete a Form A for each new Senior Manager and each time a Senior Manager takes on a new Senior Manager function.</p> <p>One suggested improvement would be to require approval of executive functions only such as Chief Executive Officer, Executive Director, Compliance Officer and Money Laundering Reporting Officer. Functions outside of that remit would require notification to the FCA only, similar to the Form J process currently utilized for a change in prescribed responsibilities. The requirement for firms to ensure key individuals remained fit & proper would still apply, therefore it is unlikely an increase in conduct risk would be created as a result of this suggested enhancement.</p> <p>Specifically in relation to Certified Persons, FIA EPTA members would suggest that the population of individuals who are in scope for certification should be reduced. As set out in more detail in Q18, we would advocate for the certification function to be limited to those roles which pose the most immediate risk to consumers/customers,</p>

	<p>such as the client dealing function, CASS oversight and Functions requiring qualifications (for example activities set out in SYSC 27.8.10 of the FCA Handbook, which includes, those individuals giving personal recommendations on long term care insurance contracts, pension transfer specialists or those providing certain mortgage advisory activities), as we see little value in other individuals being certified or being included in a public directory.</p>						
<p>Q10: Are there actions the regulators could take in respect of the SM&CR that would help enhance competition or international competitiveness?</p>	<p>Reducing the number of Senior Managers and making the FCA Directory more tailored could enhance competition and international competitiveness as SM&CR might be viewed as a less bureaucratic regime. This would help the UK maintain a proportional and risk-based regime, while helping firms operating here attract and quickly appoint diverse global talent.</p> <p>FIA EPTA members believe that the SM&CR regime can be alleviated without having a material impact on the purpose behind the regime, and in a way which supports the Government’s wider competitiveness agenda.</p>						
<p>Q11: To what extent do you agree or disagree that the SM&CR is applied proportionately to firms and individuals?</p>	<p>FIA EPTA members believe that while aspects of the SM&CR regime are beneficial to individual accountability, the criteria for being an Enhanced Firm under SM&CR should be reviewed by the FCA.</p> <p>Being a Significant SYSC firm is one of the criteria for determining whether or not a firm would be considered an Enhanced Firm. FIA EPTA members believe that the Significant SYSC criteria is not a good metric for determining whether or not a firm should be considered a Core Firm or an Enhanced Firm. FIA EPTA members believe that there are a number of discrepancies between (i) the criteria for being an Enhanced Firm when the Firm is not a Significant SYSC Firm and (ii) the criteria for being a Significant SYSC firm, as noted in SYSC 23 Annex 1 Parts 8 and 9. For example, there is a discrepancy in the CASS and AUM requirements found in the table below; in addition, the factors of total assets and liabilities appear to be arbitrarily chosen when compared to the other considerations for Enhanced SM&CR inclusion, which primarily focus on business models which could cause consumer harm.</p> <table border="1" data-bbox="772 1198 2018 1414"> <thead> <tr> <th data-bbox="772 1198 1392 1271">Significant SYSC Criteria (SYSC 1.5.2)</th> <th data-bbox="1392 1198 2018 1271">Enhanced SM&CR Criteria (excluding-Significant SYSC)</th> </tr> </thead> <tbody> <tr> <td data-bbox="772 1271 1392 1344">Total assets > 530M GBP</td> <td data-bbox="1392 1271 2018 1344">Intermediary business revenue > 35m GBP over 3 years</td> </tr> <tr> <td data-bbox="772 1344 1392 1414">Total liabilities > 380M GBP</td> <td data-bbox="1392 1344 2018 1414">regulated consumer credit lending revenue > 100m GBP over 3 years</td> </tr> </tbody> </table>	Significant SYSC Criteria (SYSC 1.5.2)	Enhanced SM&CR Criteria (excluding-Significant SYSC)	Total assets > 530M GBP	Intermediary business revenue > 35m GBP over 3 years	Total liabilities > 380M GBP	regulated consumer credit lending revenue > 100m GBP over 3 years
Significant SYSC Criteria (SYSC 1.5.2)	Enhanced SM&CR Criteria (excluding-Significant SYSC)						
Total assets > 530M GBP	Intermediary business revenue > 35m GBP over 3 years						
Total liabilities > 380M GBP	regulated consumer credit lending revenue > 100m GBP over 3 years						

	Annual fees & commissions > 160M GBP in 12-months	mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages
	CASS money (CM) received or held > 425M GBP	CASS Large firm (CM held > 1B GBP)
	Assets belonging to clients > 7.8B GBP	AUM > 50B GBP over 3 years
<p>FIA EPTA members believe that the amount of a firm’s assets and/or liabilities are not necessarily indicative of the level of risk the firm poses to consumers, competition or market integrity.</p> <p>Consolidating the criteria found within SYSC 23 Annex 1 and removing reference to Significant SYSC provisions, investment firms whose assets and liabilities were seen as large by the Significant SYSC criteria would still be captured by other aspects of the FCA Handbook that encourage good corporate and regulatory governance such as the requirement to establish various committees under MIFIDPRU 7.3 and the remuneration rules under SYSC 19G. FIA EPTA members believe this modification to SM&CR would not be detrimental in driving either individual accountability and/or good governance of firms.</p>		

4. Other improvements to the SM&CR

Question	FIA EPTA Response
Q12: How could the process for SMF approvals be further improved?	<p>Please see also our response in Q4 regarding suggested modification to Senior Manager approvals. In addition to that, FIA EPTA members believe the FCA should review the existing layout of forms required for the appointment of SMFs to see where duplicative information has been requested. We have noted two forms which we believe could be removed and factored into the Connect Forms themselves:</p> <ol style="list-style-type: none"> 1. The <i>MIFID-changes-management-body-form</i>: <ol style="list-style-type: none"> a. Information specific to the existing management body members is already within the FCA’s database and available on the register – therefore it is redundant to be provided in a separate form. This could easily be pulled from a firm’s existing profile based on individual reference numbers. b. Additionally, the details of any new members of the management body (contact details, position, professional experience, education, other directorships) will also be required elsewhere in the

	<p>Form A – specifically within the Controlled Functions section outlining a candidate’s fitness and propriety as well as the individual’s CV and statement of responsibility.</p> <p>2. The <i>mifid-article-4-information-form</i>:</p> <ol style="list-style-type: none"> a. For all Form’s – these questions could be built into Connect’s application itself. b. For the Form A – specific sections are duplicated based on information requested elsewhere in the application: <ol style="list-style-type: none"> i. Section 1 – personal details – already known via the Connect application ii. Section 2 – experience – already provided in the individual’s CV iii. Section 3 – reputation and experience – reference to SYSC 22 is already made – therefore making it part of an individual’s fit and proper assessment outside of this form itself. iv. Section 4 – investigations - already provided through the long Form A v. Section 5 - Assessment of reputation & experience – already covered in the connect application itself under ‘controlled functions’ section. vi. Section 6 – 9 can all be added into the Form A directly within Connect.
<p>Q13: To what extent do you agree that the process for obtaining criminal records and notifying these to the regulators is effective in supporting the aims of the SM&CR?</p>	<p>Overall FIA EPTA members have not found the process for obtaining criminal records problematic. Firms typically use third parties to handle much of the administration of these criminal record checks and they understand that is common within the financial services industry.</p> <p>FIA EPTA members have found that it can be difficult to obtain criminal records for individuals who have worked overseas. More recently, they have found it has been difficult to complete background checks for a number of Russian and Ukrainian nationals. In these instances, firms have taken a proportionate approach by completing as many checks as they are able to in the circumstances.</p>
<p>Q14: To what extent do you agree or disagree that the 12-week rule sufficiently helps firms to manage changes in SMFs?</p>	<p>The FCA guidance suggests that the 12-week rule is intended to allow an individual to cover for a Senior Manager without being approved, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks. FIA EPTA members have found the 12-week rule to be extremely helpful during temporary absences caused by illness or parental leave. However, if temporary arrangements last longer than 12 weeks, firms have to notify the FCA and seek consent to extend up to 36 weeks.</p> <p>FIA EPTA members would encourage that the 12-week rule could be extended, as happened during the Covid-19 pandemic to assist firms in better managing temporary absences.</p>

<p>Q15: To what extent do you agree or disagree that the regulators have in place:</p> <ul style="list-style-type: none"> a. an appropriate set of Senior Management Functions to achieve the aims of the SM&CR? b. an appropriate set of Prescribed Responsibilities to achieve the aims of the SM&CR? 	<p>Please also see our response to Q4 regarding the suggested modification to Senior Manager approvals. FIA EPTA members generally agree with the Senior Management Functions but we would disagree that they should all be subject to FCA approval.</p> <p>FIA EPTA members have found that there have been some inconsistencies with how SMF 7 (Group Entity Senior Manager) is allocated. FIA EPTA members would welcome further guidance, with examples, from the FCA on how the SMF 7 functions apply to international group structures and in what circumstances firms should be allocating this function to Senior Managers.</p> <p>In relation to the FCA prescribed responsibilities as they apply to solo-regulated firms, FIA EPTA members would welcome a review of the prescribed responsibilities. We have found that there is some overlap between the prescribed responsibilities and perhaps the number of prescribed responsibilities could be reduced. For example, there are several that deal with SM&CR, PR (1/a) dealing with responsibilities for the firm’s performance of its obligations under the senior manager’s regime, PR (2/b) responsibility for the firm’s performance of its obligations under the certification regime and PR(4/b-1) responsibility for the firm’s obligations for conduct rules training and conduct rules reporting and PR (6/g) responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all the firm’s SMF managers and key function holders. Typically, in most, these PRs would be held by the same person and therefore these prescribed responsibilities could be condensed into one PR.</p> <p>In addition to the above, and in line with our response to Q6 on collective accountability, some PR’s involve many different functions and therefore could be removed due to the general understanding that ownership of such is collectively shared:</p> <ol style="list-style-type: none"> 1. PR (18/j-3) – Clarity from the FCA in relation to what they consider the outsourcing of internal audit functions in relation to subsidiaries within international groups would be welcomed. 2. PR (19/s) – As stress testing is only applied to firms within the scope of MIFIDPRU 7.5, we would suggest this is removed, especially as the ICARA process as many investment firms are owned across multiple functions, most notably risk and finance. 3. PR (21/t) – business models are the responsibility of the governing body and a key focus of the executive, therefore having a PR allocated to a single SMF for this purpose appears to be contradictory to the collective responsibilities of the Board of Directors.
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<p>Q16: To what extent does the Duty of Responsibility support:</p> <ul style="list-style-type: none"> a. personal accountability? b. better conduct of Senior Managers? 	<p>The Duty of Responsibility means that Senior Managers can be liable if it can be proved that they failed to take reasonable steps. The duty has encouraged Senior Managers to document decision-making processes and has also encouraged Senior Managers to meet with their direct reports regularly to whom they may have delegated some of their responsibilities. This is to ensure that they are kept abreast of any pertinent issues and understand any decisions that may have been made outside of formal committee governance structures. Although many firms were already taking steps to document decision-making processes prior to SM&CR, SM&CR has again emphasized the importance of doing so.</p> <p>As set out in Q8, FIA EPTA members believe that further guidance for Senior Managers through examples could help Senior Managers when thinking about reasonable steps.</p>
<p>Q17: To what extent do you agree or disagree that Statements of Responsibilities and Management Responsibilities Maps help to support individual accountability?</p>	<p>FIA EPTA members believe that Statements of Responsibilities assist in ensuring clarity is provided to Senior Managers as to their responsibilities under SM&CR and provide assurance to an SMF as to their remit and to a certain degree their liability. We also agree that Management Responsibilities Map helps support individual accountability as it ensures governance is clearly outlined in a succinct manner for all SMFs and the FCA.</p>
<p>Q18: To what extent do you agree or disagree that the Certification Regime is effective in ensuring that individuals within the regime are fit and proper for their roles?</p>	<p>FIA EPTA members believe that the Certification Regime adds little value in ensuring that individuals within the regime are fit and proper for their roles. FIA EPTA members would argue that the Certification Regime adds any real value to the FCA in supporting its aim of reducing consumer harm, promoting effective competition and protecting market integrity.</p> <p>FIA EPTA members believe that a number of Certification functions should be removed (such as the algorithmic trading, significant management function and anyone who supervises or manages a certified function but isn't a senior manager) as these do not enhance the FCA's aims of protecting consumers. FIA EPTA members would argue that there is a limited utility to having algorithmic developers or compliance professionals included as part of the Certification Regime or included in the public FCA Directory. In addition to reducing the scope of the roles included in the Certification Regime, we believe the FCA could tailor this aspect of the SM&CR regime to focus on those areas which do pose harm to consumers, namely individuals directly involved with retail clients and/or individuals who are required to possess qualifications as outlined in the FCA's Training & Competence Sourcebook. This would align the Certification Regime with the aims of the Retail Distribution Review activities (RDR activities).</p>

	<p>The FCA Directory should be limited to only those individuals who deal with retail clients and/or hold SMF functions approved by the FCA (see Q9 approach). The Certification Regime means firms have to list many individuals on the register and in many cases those individuals will have no dealings with retail clients or consumers. This is problematic for the following reasons:</p> <ul style="list-style-type: none"> - data protection: for example, the register is often used as a repository for salespersons to cold call individuals at firms and for scammers to impersonate certified individuals; - Operational burden on firms to maintain the register - Individuals being certified for multiple certified functions.
<p>Q19: Regarding the Directory of Certified and Assessed Persons, to what extent do you agree or disagree that:</p> <ol style="list-style-type: none"> a. it captures the appropriate types of individuals? b. the requirements for keeping it up to date are appropriate? 	<p>As also set out in our response to Q18, FIA EPTA members believe that the FCA Directory should be limited to Senior Managers and those individuals who deal with retail clients. This may give some clients who interact with a firm some comfort over who they are dealing with.</p> <p>Firms must update the Directory of joiners, leavers and changes within 7 business days. FIA EPTA members would suggest that this should be extended to 28 business days to reduce the administrative burden on firms.</p>
<p>Q20: To what extent do you agree or disagree that regulatory references help firms make better-informed decisions about the fitness and propriety of relevant candidates?</p>	<p>Yes. FIA EPTA members agree regulatory reference help firms make decisions about fitness and propriety of relevant candidates. Regulatory references are particularly helpful where the candidate has been subject to disciplinary action and ensure that firms disclose any information that may be relevant to a candidate's fitness and propriety.</p>
<p>Q21: To what extent do you agree or disagree that the Conduct Rules are effective in promoting good conduct across all levels of the firm?</p>	<p>FIA EPTA members do not believe the Conduct Rules have materially promoted good practice, simply because firms generally applied these expectations within existing policies and procedures (as outlined in previous responses to questions noted above). In addition to this, the rules are very high level and simply provide basic minimum requirements for an individual who works in financial services. FIA EPTA members believe that historically firms have tailored training programs which are more effective in promoting good conduct.</p>
<p>Q22: Are there other areas, not already covered in the question above, where you consider</p>	<p>FIA EPTA members would welcome feedback from the FCA on best practices for SM&CR firms. We appreciate the FCA's previous publications on the topic, for example, the Guide for FCA solo-regulated firms. However more could be done to improve the quality of the guidance provided to SM&CR firms.</p>

changes could be made to improve the SM&CR regime?	
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